

ALTERNATIVE DISPUTE RESOLUTION SECTION

Respectfully submits the following position on:

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SB 0901 – SB 0903

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The Alternative Dispute Resolution Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Alternative Dispute Resolution Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Alternative Dispute Resolution Section is 748.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 23. The number who voted in favor to this position was 19. The number who voted opposed to this position was 2.

Report on Public Policy Position

Name of section:

Alternative Dispute Resolution Section

Contact person:

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Bill Number:

SB 0901 (Schuitmaker) Civil procedure; alternate dispute resolution; condominium act; revise arbitration provisions to reflect adoption of uniform arbitration act. Amends sec. 144 of 1978 PA 59 (MCL 559.244).

SB 0902 (Schuitmaker) Civil procedure; alternate dispute resolution; arbitration; make arbitration provisions of the revised judicature act subject to uniform arbitration act. Amends sec. 5070 of 1961 PA 236 (MCL 600.5070); adds sec. 5037 to ch. 50 & repeals (See bill).

SB 0903 (Schuitmaker) Civil procedure; alternate dispute resolution; uniform arbitration act; enact. Creates new act.

Date position was adopted:

July 20, 2010

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

23

Number who voted in favor and opposed to the position:

19 Voted for position

2 Voted against position

0 Abstained from vote

2 Did not vote

Position:

Support

Explanation of the position, including any recommended amendments:

The RUAA does not mandate or require arbitration, but is designed to provide a framework if arbitration takes place and replaces an antiquated statute which was adopted in the 1960's.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2012-SB-0901>

<http://legislature.mi.gov/doc.aspx?2012-SB-0902>

<http://legislature.mi.gov/doc.aspx?2012-SB-0903>

THE REVISED UNIFORM ARBITRATION ACT

The objective of the Revised Uniform Arbitration Act ("RUAA") is to modernize the Michigan Arbitration Act ("MAA") which provides for the enforceability of executor agreements to arbitrate. The MAA was adopted in 1961¹.

The RUAA enhances the MAA by including important procedural protections not part of the MAA regulatory scheme. The key protections include notice requirements for initiating arbitration (Section 2), validating the use of electronic records and contracts consistent with federal law (Section 1), bifurcating the role of courts and arbitrators in determining arbitrability (Section 6), enabling courts to direct consolidation of proceedings in the interest of justice (Section 10), strengthening the arbitral disclosure process by requiring arbitrators to disclose known financial interests or personal relationships that could affect impartiality (Section 12), authorizing the arbitrator to limit or permit discovery (Section 17), and specifying requirements for awards of punitive damages, when and if appropriate (Section 21). This does not affect domestic relations arbitration which was adopted in 2001. If arbitration is currently elected in a domestic relations matter, the provisions of the MAA would apply unless modified by the Domestic Arbitration Act, in which case the Domestic Arbitration Act will prevail. This will still be the case if the RUAA is adopted.

The original MAA, which is patterned after the Federal Arbitration Act ("FAA") adopted by the United States Congress in 1925, is considered a "bare-bones" statute. The MAA has not been substantially modified since adoption, despite the evolution and greater embrace of arbitration, both on the state and federal levels. Gaps have been filled in by case law, which provides an interesting patchwork of jurisprudence, complicated by lack of uniformity across state lines. Thus, the goal of the RUAA is to design a statute that would preserve the efficiencies of arbitration, incorporate the pertinent law (*e.g.*, disclosures, discovery, immunity, judicial review), and facilitate the use of arbitration by offering uniformity and predictability. This legislation does not mandate arbitration, but rather provides a modern framework when and if arbitration is utilized.

Conclusion

The RUAA does not depart from the foundational provisions of the MAA or the FAA. Rather, it includes provisions that were previously addressed by arbitrators or courts on a case-by-case basis, resulting in process inefficiencies, increased costs, and disparate results. The RUAA is a qualitatively improved statute that will offer arbitration participants enhanced predictability, lower the costs, shorten the length the proceedings take, and, over time, increase the national uniformity of state arbitration legislation.

¹ MCLA §§600.5001 *et seq.*; MSA §§27A.5001 *et seq.*; MCR 3.602.